Commissie van advies inzake volkenrechtelijke vraagstukken

Press release - CAVV Advisory Committee issues advice on the legal obligation of third states to prevent genocide

The Hague, August 4, 2025 - The Advisory Committee on International Law Issues (CAVV) has issued an advisory opinion to the government on its own initiative regarding the obligation of third states to prevent genocide. The advisory opinion is prompted by the legal uncertainty surrounding this obligation, as laid down in the Genocide Convention.

Advice clarifies the scope of the prevention obligation

The CAVV's advisory report addresses the meaning and scope of the obligation of third states—that is, states not directly involved in a situation of genocide—to prevent genocide. The report is not focused on specific situations, but rather applies to all cases involving (a serious risk of) genocide, both now and in the future.

The CAVV previously addressed this topic in its advisory opinion no. 28 (2017), but without specifically addressing the obligations of third states. This new advisory opinion explicitly elaborates on this legal framework.

Main conclusions of the CAVV

Preventing genocide is not optional under international law. The obligation to do so is enshrined in the Genocide Convention and underscored by the International Court of Justice.
This obligation applies not only to states directly involved, but to all states party to the Convention. It commences when a state becomes aware of a serious *risk* of genocide being committed. Every state is obligated to act, even if it lacks the capacity to prevent genocide by acting alone. It is possible, after all, that all the individual actions of states, taken together, could still prevent genocide.

Establishing international responsibility for the failure of third states to prevent genocide occurs ex post, after it has been established that genocide has actually occurred. A state is liable if it manifestly fails to take measures to prevent genocide.

'Appropriate care' duty requires action according to ability

The measures required of a state depend on the degree of influence it has over the state committing genocide. The idea is that when relations with that state are good, a measure to prevent genocide will carry more weight and thus be more effective. The degree of influence a state has is determined by, among other things:

- the geographical proximity to the area where there is a risk of genocide,
- the political, economic or military ties with the state or actors concerned,
- any special responsibilities, for example due to historical (colonial) relationships.

Moreover, a state with limited individual influence may still be obliged to take action when it within the framework of an influential regional organisation such as the European Union, influence can still be exerted In that case, the state must take the initiative to put the issue on the agenda.

From diplomacy to legal action: a escalating scale of measures

The CAVV lists a series of possible measures – on an increasing scale from soft to hard – that the Netherlands or the EU could consider. These include:

- diplomatic steps such as **'naming and shaming',** démarches or recalls of ambassadors;
- **retaliations,** such as visa restrictions, denial of arms shipments or suspension of a treaty if it provides for this possibility;
- **countermeasures** (retaliations), which are in principle unlawful but may be justified if they proportionately induce a state in breach of international obligations to act lawfully; • legal action such as referral to the International Court of Justice or a referral to the Prosecutor of the International Criminal Court.

Furthermore, the CAVV argues that states should not only take measures but also **be transparent about their choices.** For example, they could publicly explain how they assess the risk of genocide, what measures they are taking, and why they believe these are effective.

Consistency is key

Finally, the CAVV emphasizes the importance of **consistency.** States should express themselves and act in similar ways in comparable situations. This promotes the effectiveness of their measures, maintains their credibility, and safeguards the integrity of international law.

Letter to Parliament dated 4 July 2025

The CAVV has taken note of the letter to Parliament from the Minister of Foreign Affairs dated July 4, 2025, which included a draft request for advice on this topic. However, the CAVV had already decided to advise the Minister on its own initiative.

About the CAVV

The Advisory Committee on International Law Issues (CAVV) is an independent advisory body that advises the government and the House of Representatives and the Senate, both solicited and unsolicited, on issues of international law. It addresses legal issues focusing on the interpretation of international law and its desired development.

For questions or further explanation, the editors can contact Kirsten van Loo, the secretary of the CAVV, via cavv@minbuza.nl or 06 158 561 23.

For more information about the CAVV in general, and links to previous advisory opinions, see the website: https://www.adviescommissievolkenrecht.nl.

Commissie van advies inzake
volkenrechtelijke vraagstukken

The obligation of third states to prevent genocide

Advice 50, August 4, 2025

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Introduction

There is considerable uncertainty in the political and social debate regarding the precise legal nature and content of the obligation of third states, such as the Netherlands, to prevent genocide.1 The Advisory Committee on International Law Issues (CAVV) therefore considers it desirable to issue its own advisory opinion on this matter. The Netherlands, constitutionally bound to promote the development of the international legal order,2 can be expected to respond adequately when a situation of serious risk of genocide arises. The purpose of this advisory opinion is to outline the framework for this.

The CAVV has taken note of the letter to Parliament from the Minister of Foreign Affairs dated July 4, 2025, in which the Minister submits to the House of Representatives the solicited and unsolicited legal advice received by the Cabinet regarding compliance with the Genocide Convention in the Netherlands.3 Attached to this letter is a copy of a memorandum prepared by the Legal Affairs Directorate, advising the Minister to request the CAVV to issue an advisory opinion on the scope of the obligation to prevent genocide. The CAVV has taken note of the memorandum and the accompanying "draft request for advice." The CAVV has not received this request from the Minister.4 Because the CAVV had previously decided to issue its own advisory opinion on the obligation—specifically of third states—to prevent genocide, the CAVV does not answer the questions formulated in the draft request for advice as such.
There is, however, considerable overlap between the questions identified by the CAVV and those in the draft advice request.

The CAVV has previously advised on international law regarding genocide. In particular, in 2017, together with the then-external legal advisor (EFTA), it advised on the possibilities, meaning, and desirability of politicians' use of the term genocide.
In this advisory report, the CAVV also briefly addressed the obligation to prevent genocide. It stated that "the obligation to prevent has not yet been fully determined" and that "[i]n particular, the content of the obligation, and more specifically, the question of what kind of preventive acts and measures States are expected to undertake," remains largely open.6 In that advisory report, the CAVV did not specify the obligations of third states or the content of the obligation to prevent genocide. The CAVV does so in this advisory report.

The advisory report is structured as follows. Section 1 establishes the scope and limitations of this report. Section 2 outlines the legal framework applicable to the obligation of third states to prevent genocide. Section 3 addresses the nature of the obligation, while section 4 discusses the measures third states can take to implement this obligation.
Finally, a conclusion and summary of the advice follows.

The text of this advice was adopted by the CAVV on 21 July 2025.

ÿ I

Scope and limitations of the advice

This advice concerns the obligation to commit *genocide* to prevent. The advisory opinion therefore does not address the obligation to prevent other international crimes, such as war crimes or crimes against humanity. This is because the obligation to prevent international crimes only has an undeniable treaty basis in the Genocide Convention with respect to genocide.

Furthermore, this treaty provides for mandatory dispute settlement before the International Court of Justice (ICJ).8 Currently, a case is also pending before the ICJ concerning possible violations of the obligation to prevent genocide.9

Furthermore, the advice is limited to the obligations of third states that are parties to the Genocide Convention. Third states are all states other than those directly involved in genocide.
are involved. This last category of states includes in particular the state in whose territory – or in the territory over which it exercises effective control – it is plausible that

– genocide takes place, the state that is alien territory occupies, or the state whose it is likely that he, or his subjects, is involved in acts of genocide.

The advice does not concern obligations of non-state actors in third countries, such as companies or individuals.

The advisory opinion focuses on the obligation of third states to *prevent genocide.* It therefore does not address the potential obligations of third states to punish genocide, nor the criteria for third state complicity in genocide.

Finally, the advice does not focus on any specific situation, but on all situations in which genocide occurs (also in the future), or at least in which there is a serious risk of genocide.

ÿ 2

Legal framework

The obligation to prevent genocide is codified in the Genocide Convention.11
The treaty was concluded in 1948 and entered into force in 1951. Currently, 153 states are parties, including the Netherlands. The treaty provides, among other things, for a state party obligation to prevent the crime of genocide. The scope of this obligation was clarified in 2007 by the ICJ in the *Bosnia Genocide* case.

Article I of the Genocide Convention provides that *"The Contracting Parties establish that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."* The ICJ has considered that the obligation to prevent genocide is linked to the obligation of States Parties to punish perpetrators of genocide.13 The ICJ has recognized that punishing perpetrators of crimes can be one of the most effective ways to prevent genocide.14 However, the obligation to prevent genocide is a separate obligation, having its own content and scope.15 In addition to the distinction between prevention and punishment, the ICJ has also considered that a violation of the obligation to prevent is distinct from complicity.

According to the ICJ, complicity in genocide requires an active act, while a failure to prevent constitutes an omission.16

Article VIII of the Genocide Convention contains the only other reference to the prevention of genocide: *"Each Contracting Party may call upon the competent organs of the United Nations to take such measures under the Charter of the United Nations as they may deem appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III."* The ICJ noted that the obligation to prevent goes beyond the action of United Nations organs under Article VIII.17

In situations where a UN body, such as the Security Council or the General Assembly, acts to prevent genocide, states parties remain bound by their own obligation to prevent genocide under Article I.

In the *Bosnia Genocide* case, the ICJ

Several characteristics of the obligation to prevent have been elaborated, including its normative nature, the circumstances leading to its application, its scope, and its content. Under the Genocide Convention, the obligation to prevent genocide is an *erga omnes partes* obligation.18 Each State Party to the Genocide Convention therefore owes this obligation to all other States Parties, which in practice means that every State Party has an interest in compliance with the Convention and can invoke the responsibility of a State Party.19 The Genocide Convention thus creates a network of obligations and correlative rights among States Parties.20

While each state party has its own obligation to prevent genocide, in practice, states parties must act together or simultaneously to be effective. However, a state party is obligated to act even if it lacks the capacity, acting alone, to prevent genocide. The ICJ has clarified that a state party may breach its obligation even if a specific preventive act by that state would not have been sufficient to prevent the commission of genocide (if this could even be proven).21 The ICJ considered that: *'the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result – averting the commission of genocide – which the efforts of only one State were insufficient to produce.'22* The obligation to prevent genocide therefore does not exclude the liability of a particular state party for failing to take preventive action.

The obligation to prevent genocide does not solely concern the prevention of the *commission* of genocide (Article III(a) of the Genocide Convention). According to the CAVV, this obligation of contracting states can also apply to any preparatory acts, such as direct and public incitement to genocide (Article III(c) of the Genocide Convention).23 In the *Bosnia Genocide* case, the ICJ clarified that the obligation to prevent genocide entails the implementation of deterrent measures against those who *prepare* genocide.24 This obligation therefore does not apply only for the commission of genocide but also applies to preparatory acts.

The obligation to prevent genocide arises as soon as the third state is aware *('was aware'),* or would normally have been aware *('should normally have been aware'),* of the existence of a serious risk of genocide.26 This concerns actual or constructive awareness. This is a matter of proof.27 The ICJ does not clarify how constructive awareness should be interpreted.

The 'due care' nature of the obligation to prevent genocide implies that a state itself should take steps to obtain information from a combination of sources.28 Concretely, awareness of the serious risk of genocide can be demonstrated, among other things, by UN reports, decisions of the ICJ in cases in which the commission of genocide is alleged,29 diplomatic notes, news reports, text messages and videos on social media, reports from NGOs such as the International Red Cross and Amnesty International, and answers to questions in parliament.30

Factors indicating the existence of a serious risk of genocide include the existence of acts which may be a constituent element of the crime and are directed against a protected group, the existence of a plan, policy or pattern of acts which may indicate an intent to destroy the group, dehumanising remarks, or ethnic cleansing as part of acts which are a constituent element.31

The obligation to prevent genocide arises from the moment a State Party is aware, or would normally have been aware, of a serious risk of genocide, but a breach of that obligation and liability arise only when genocide has actually been established.32 There is a distinction between the moment at which the obligation to prevent commences and the moment at which a breach of that obligation can be established.

To date, the ICJ has only found genocide once, in the *Bosnia Genocide* case, and this is the only case in which the ICJ has found a corresponding violation of the preventive measures

obligation has been established. In a number of other cases currently pending before the ICJ, states have asserted that genocide has occurred, but the ICJ has not yet established this.33 In some recent cases, the ICJ has already granted interim measures obliging the states involved to prevent genocide.34

When the ICJ determines that there is a real and

If there is an imminent risk that the rights under the Genocide Convention will be irreparably damaged, it can be assumed that the 'serious risk of genocide' has been established and the obligation to prevent it has come into effect.35

ÿ 3

Nature of the obligation to prevent genocide

The obligation to prevent genocide applies to every State party to the Genocide Convention36
and is an obligation of means, not an obligation of result. The third state has a duty of due diligence , meaning that the measures required to comply with that duty depend on the specific situation.37 The ICJ makes it clear that the obligation must be interpreted in the specific context of the treaty and the case before it.38

The ICJ ruled in the *Bosnia Genocide* case

that *'responsibility is, however, incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.'39* This broad formulation of responsibility is related to the humanitarian purpose of the treaty and the fact that the prohibition of genocide is a *jus cogens*

norm is and entails obligations *erga omnes.40* This gives the obligation to prevent genocide a certain 'gravity'.41

This has consequences for fulfilling the prevention obligation and the accountability for measures taken. The CAVV considers it important that third states publicly account for how they fulfill the obligation to prevent genocide.42

Public accountability is consistent with the obligation to prevent violations of a *jus cogens* norm. The CAVV realizes that the

public accountability can be fulfilled

vary from country to country and may depend on many factors including democratic control of the government, a free press and an independent judiciary.

Unlike duties of care in international human rights law

The Genocide Convention lacks a legal or quasi-judicial oversight mechanism that further defines the scope of the obligation.43 The requirement for public explanation by contracting states can, to some extent, overcome the lack of such a mechanism.

ÿ 4

Measures to prevent genocide

It is impossible to state *in the abstract* what measures a State party must take to prevent genocide.44 In general, States parties have the obligation *'to employ all means reasonably available to them, so as to prevent genocide as far as possible';* a State party will be liable if it

'manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide.'45 These must be measures that have a deterrent effect on those who commit or threaten to commit genocide.46

The possibility of exerting influence always requires a *concrete* assessment and depends on several factors and parameters.47
The ICJ refers to the geographical distance of the State concerned from the place of the events, and the strength of the political and other ties between the authorities of that State and the main actors in the events.48 In addition, the special legal responsibility of a State party to the Convention towards another State or group because of a colonial past, or other relationship that entails a special responsibility for that State or group, also plays a role.49

In the opinion of the CAVV, this means that there is a correlation between the degree of influence

(economic, political, military) and the extent to which this obligation requires concrete action.

Whether or not there is action in accordance with the appropriate care requirement will in many cases depend on the relationship between

the third state with the state that is the source of the serious risk of genocide.50 The idea is that when the relationship with that source is good, a measure to prevent genocide will carry more weight and thus be more effective. A *concrete* assessment will always be required. For example, it is possible that a third state geographically close to the location of the events *cannot* exert influence, while a third state located further away *can.51*

An obligation to prevent genocide also arises for third states that do not themselves have strong political, military or economic ties, but whose combined actions, for example in the framework of an influential regional organisation such as the EU, can nevertheless influence events.52 The obligation to prevent genocide is then exercised collectively, although individual states must take the initiative to prevent it.

to put the issue on the agenda at international or regional level.

The obligation to prevent genocide may imply that a third state in concrete qualifies and condemns violations that indicate (a serious risk of) genocide as such.53 The third state can then be expected to publicly explain what measures it is taking or intends to take to prevent genocide, and why it believes these are effective.

If diplomatic efforts, both in front of and behind the scenes, prove ineffective,
The obligation to prevent genocide requires a change of course and increased diplomatic pressure. The obligation to prevent genocide requires that measures be effective and deterrent. If a third state, due to close economic, political, and military ties, has an arsenal of (pressure)

If he has resources at his disposal, he should use them and increase the pressure.

Without any claim to completeness, the CAVV considers the following measures possible, on an ascending scale, from soft to hard, from diplomatic to legal, from declaratory policy to action. These measures can be considered by the Netherlands independently or within the EU framework.

As for *diplomatic* methods, one could consider *'naming and shaming':* one can criticise the unacceptable practices in the state concerned through public channels, such as press statements and social media54 and, if necessary, raise the issue with international institutions (such as the UN Special Adviser on the Prevention of Genocide,55 the UN Human Rights Council, Special Rapporteurs of the latter, UN bodies such as the General Assembly or the Security Council56) or regional bodies (for example, the African Union Special Envoy for the Prevention of Genocide and Other Mass Atrocities).57 The resolutions or reports of these institutions can damage the reputation and international standing of the state concerned.

influence the state.58 In addition, a third party can the State may lodge *a diplomatic protest* ,59 either directly or through diplomatic channels.
The Dutch ambassador in the country concerned country can send a *'note verbale'* or a take *action* at the Ministry of Foreign Affairs of this State;60 or the ambassador of this country may be summoned with the Dutch Minister of Foreign Affairs. A stronger variant of this is the recalling its own ambassador for consultations.61

Retaliations , measures that are unpleasant but not unlawful,62 may include the introduction or tightening of visa requirements (including increasing costs and making procedures more onerous), the withdrawal of overflight rights, the withholding of government contracts (to the extent lawful under WTO law), entry restrictions or bans on certain individuals,63 the refuse to accept weapons or other military equipment deliver,64 discouraging investments in the relevant state (for example, by not having to provide consular assistance to companies that investing in that state), or suspending a treaty if the treaty provides for this possibility provides (for example if the treaty provides for a contains human rights clause).

Furthermore, *countermeasures* or reprisals may be taken. These are measures that are unlawful in themselves, but the unlawfulness of which is eliminated by being proportionately imposed on a state that violates international obligations.

encourages lawful behaviour.65 This may involve non-compliance with certain treaty obligations or the freezing of certain assets.

Finally, it is possible to summon a state before the ICJ, provided that both parties are parties to the Genocide Convention and have not made reservations to the ICJ's jurisdiction.66 As part of a preventive strategy, it may be appropriate to support international criminal justice mechanisms, such as the International Criminal Court (ICC). A state party to the Rome Statute of the ICC could refer a situation in another state to the Prosecutor of the ICC, based on Article 14 of the Rome Statute.

Finally, the CAVV points out that, in the event of a serious risk of genocide, third states must act consistently in comparable situations and take appropriate measures. Consistency—*avoiding* double standards—is crucial for the effectiveness of the measures and interventions to be taken, for the credibility of third states, and for the integrity of international law.

Closing and advice

In this advisory report, the CAVV addressed the nature and content of the obligation of third states, such as the Netherlands, to prevent genocide. The CAVV makes the following findings and recommendations:

1 Any third State party to the
The Genocide Convention has its own obligation to prevent genocide, wherever in the world this genocide is threatened.

2 A third state is obliged to act even if it does not have the capacity, acting alone, to prevent genocide.

3 A third state is only liable for
Violation of the obligation to prevent genocide if genocide is actually committed. He is liable if he manifestly fails to take measures to prevent genocide.

4 The obligation to prevent genocide
arises as soon as the third State is aware, or would have been aware under normal circumstances, of the existence of a serious risk of genocide. When the ICJ determines that there is a real and

If there is an imminent risk that the rights under the Genocide Convention will be irreparably damaged, it can be assumed that the 'serious risk of genocide' has been established.

5 The nature of the obligation to commit genocide to prevent has a certain 'heaviness'. This has implications for fulfilling the obligation to prevent genocide and for accountability for measures taken. The third state can be expected to publicly account for how it fulfills its obligation to prevent genocide.

6 The obligation of the third State is an obligation of means and depends on its ability to influence the persons committing or threatening to commit genocide. It is obliged to take all measures reasonably at its disposal to

To prevent genocide. This will vary from state to state and from case to case.

7 Third States should take measures which can have a deterrent effect
have on those who prepare or commit genocide. The ability to exert influence depends on several factors. A *specific* assessment will always be necessary.

As a rule of thumb, more can be expected from a third state that has strong ties and a good relationship with the state that is the source of the risk of genocide.

8 International law contains no clear or fixed rules prescribing the choice of measures to prevent genocide.
Third States will have to make a case-by-case assessment of the adequacy and effectiveness of the measures to be taken. These measures can be taken on an escalating scale, from mild (diplomatic measures) to severe (retortions and reprisals). If certain measures do not appear to have a deterrent effect, the state in question must take more drastic measures if this is within its means.

9 Third States shall participate in similar to express situations consistently and take action in the event of a serious risk of genocide.

Although the CAVV in this advice only addresses the

Having addressed the obligation to prevent genocide, the CAVV points out that third states may also have obligations to prevent other international crimes, such as crimes against humanity or war crimes.67 They must also ensure that they are not complicit or otherwise contribute to these crimes.68

List of abbreviations

CAVV

Advisory Committee on International Law Issues

EVA

External International Law Advisor

Genocide Convention

Convention on the Prevention and Punishment of the Crime of Genocide

IGH

International Court of Justice

ILC

International Law Commission

ISH

International Criminal Court

UN

United Nations

WTO

World Trade Organization

Endnotes

1 See Report of a committee debate held on January 21, 2025, about Middle East, *Parliamentary Papers II* 2024/25, 23432, no. 558; and Letter from the Minister of Foreign Affairs, Response to requests regarding the Genocide Convention and NGO assessment reports , *Parliamentary Papers II* 2024/25, 23 432, no. 546.

2 Article 90 of the Constitution ('The government shall promote the development of the international legal order.')

3 Letter from the Minister of Foreign Affairs, Commitment to provide advice on compliance with the Genocide Convention by the Netherlands, *Parliamentary Papers II* 2024/25, 23432, no. 567 and the appendices: 'Note Request for advice from CAVV regarding the obligation to prevent genocide' and 'CAVV Request for advice regarding the obligation to prevent genocide'.

4 At the time of determining the text of this advice, 21 July 2025.

5 CAVV and EVA, *Advice on the possibilities, meaning and desirability of the use by politicians of the term genocide,* Advice 28, March 3, 2017. On June 28, 2023, the CAVV also issued Advisory Opinion No. 42 on "International Law Issues Concerning the Qualification of the Holodomor as Genocide." This advisory opinion, however, does not concern the obligation to prevent genocide, but rather the use of the term genocide to qualify historical injustice.

6 CAVV and EVA, *Advice on the possibilities, meaning and desirability of the use by politicians of the term genocide,* Advice 28, March 3, 2017, p. 12.

7 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, *Trb.* 1960, 32 (Genocide Convention), Article I. Article 4 of the (non-binding) ILC, 'Draft articles on Prevention and Punishment of Crimes Against Humanity, 2019', *Yearbook of the International Law Commission, 2019,* Vol. II, Part Two, provides an obligation to prevent crimes against humanity. In 2024, it was decided to open formal negotiations on a treaty based on these articles, Resolution of the UN General Assembly, 'United Nations Conference of Plenipotentiaries on Prevention and Punishment of Crimes against Humanity', 12 December 2024, UN Doc. A/RES/79/122. As regards the law of war (international humanitarian law), the Geneva Conventions (1949) do not expressly provide for an obligation to prevent of violations, although Common Article 1 (of the Geneva Convention relative to the Protection of Civilian Persons in Time of War) does refer to the obligation 'to respect and to ensure respect for this Convention in all circumstances'.

Article IX of the Genocide Convention.

9 ICJ March 1, 2024, *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany), Application instituting proceedings and a request for the indication of provisional measures.*

10 For a broader analysis, see, for example, I. Pietropaoli, 'Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza', Al-Haq Europe and SOMO, 2024; R. van Alebeek, 'Dutch Israel Policy, Through the Lens' of obligations under international law in relation to violations committed by another', *Nederlands Juristenblad* 2025/1779.

11 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, *Trb.* 1960, 32 (Genocide Convention).

12 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 428-438 *(Bosnia Genocide).*

13 Ibid., par. 425-426.

14 Ibid., par. 426.

15 Ibid., par. 427.

16 Ibid., par. 432.

17 Ibid., par. 427.

18 ICJ 11 July 1996, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections, Judgment, ICJ Reports 1996,* p. 595, par. 31.

19 See ICJ 20 July 2012, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, ICJ Reports 2012,* p. 422, par. 68-69: 'These obligations may be defined as “obligations erga omnes partes” in the sense that each State party has an interest in compliance with them in any given case. In this respect, the relevant provisions of the Convention against Torture are

similar to those of the Convention on the Prevention and Punishment of the Crime of Genocide (…) It follows that any State party to the Convention may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes'*. See also: ICJ 22 July 2022, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, ICJ Reports 2022,* p. 477, par. 107-113.

20 See also *Separate Opinion of Judge Lauterpacht,* par. 86, at: ICJ 13 September 1993 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 13 September 1993, ICJ Reports 1993,* p. 325.

21 ICJ February 26, 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 430.

22 Ibid.

23 For another view see C.J. Tams, L. Berster and B. Schiffbauer, The Genocide Convention: *Article-by-Article Commentary (second edition),* Beck-Hart-Nomos 2024, p. 55.

24 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par 431: '(…) if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harboring specific intent *(dolus specialis),* it is under a duty to make such use of these means as the circumstances permit.'

25 Ibid., par. 432.

26 Ibid., par. 431: '(…) a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed.'

27 Thus, consciousness was derived from documents of meetings between Slobodan Milosevic and officials of third countries which showed that the dangers were known to the authorities in Belgrade. Ibid., par. 438.

28 See L. van den Herik, E. Irving, 'Due Diligence and the Obligation to Prevent Genocide and Crimes Against Humanity', in H. Krieger, A. Peters and L. Kreuzer (eds), *Due Diligence in the International Legal Order,* Oxford 2020, p. 210. They define constructive awareness through a 'should have known' criterion that entails a duty to provide information.

29 See regarding the plausibility of the risk of genocide, in particular the ICJ decisions on provisional measures in cases in which genocide is alleged: ICJ 23 January 2020, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, ICJ Reports 2020,* p. 3, para. 56; ICJ 26 January 2024, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, ICJ Reports 2024,* p. 3, par. 54. See also I. Pietropaoli, 'Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza', Al-Haq Europe and SOMO, 2024, p. 22.

30 In case of strong bilateral ties, the chance It is more likely that a third state will have information about the risk of genocide. See B. Schiffbauer, 'The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention,' *Genocide Studies and Prevention: An International Journal,* Vol. 12-3, 2018, p. 91: 'The closer a State was involved in the respective situation (for example geographically, by bilateral relations or as a host for refugees), the better it knows the facts and thus can assess whether or not genocide was present.'

31 Regarding these factors with regard to Gaza, see the 'Note The Definition of Genocide in Relation to the Situation in Gaza', p.5-7, appendix to: Letter from the Minister of Foreign Affairs, Commitment to provide advice on compliance with the Genocide Convention by the Netherlands, *Parliamentary Papers II* 2024/25, 23432, no. 567.

32 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 431; Article 14 paragraph 3 of the articles on State Responsibility (ARSIWA), in: ILC, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)', *Yearbook of the International Law Commission,* 2001, vol. II, Part Two.

33 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar: 7 States intervention); Allegations of*

Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel); Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v Germany).

34 ICJ January 23, 2020, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, ICJ Reports 2020,* p. 3, para. 86(1); ICJ 26 January 2024, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024,* ICJ Reports 2024, p. 3, para. 86(1).

35 ICJ January 26, 2024, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Provisional Measures, Order of 26 January 2024, ICJ Reports 2024,* p.3. This observation happened as part of the procedure for provisional to issue measures, without prejudice to possible findings later in the procedure grounds.

36 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and6 Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 461.

37 Ibid., par. 430: 'In this area the notion of “due diligence”, which calls for an assessment in concreto, is of critical importance.' O. Ben-Naftali, 'The obligations to prevent and to punish genocide', in P. Gaeta (ed), *The UN Genocide Convention: A Commentary,* Oxford Commentaries on International Law, 2009, p. 40.

38 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 183, par. 429; ICJ 5 February 1970, *Barcelona Traction, Light and Power Company, Limited, Judgment, ICJ Reports 1970,* p. 3, par. 33, 34.

39 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 430.

40 Ibid., par. 162: 'Those characterizations of the prohibition on genocide and the purpose of the Convention are significant for the interpretation of the second proposition stated in Article I — the undertaking by the Contracting Parties to prevent and punish the crime of genocide, and particularly in this context the undertaking to prevent.'; ICJ May 28, 1951, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, ICJ Reports 1951,* p. 15, p. 23. See also ICJ 23 January 2020, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, ICJ Reports 2020,* p. 3, par. 41: 'In view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity.'; IGH July 22, 2022, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment, ICJ Reports 2022,* p. 477, par. 106, 107.

41 On the specific nature of this obligation, see T. Stephens and D. French, *ILA Study Group on Due Diligence in International Law - Second Report,* 2016; M. Milanoviÿ, State Responsibility for Genocide: A Follow-Up', *European Journal of International Law,* Vol. 18-4, 2007, p. 685. Where in the middle can remain or the obligation to prevent genocide itself is a jus cogens norm. See discussion on this subject: O. Ben-Naftali, 'The obligations to prevent and to punish genocide', in P. Gaeta (ed), *The UN Genocide Convention: A Commentary,* Oxford Commentaries on International Law, 2009, p. 36 (a jus *cogens* norm); ICJ February 26, 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 210; A, Gattini, 'Breach of the Obligation to Prevent and Reparation Thereof in the ICJ's Genocide Judgment', *European Journal of International Law* 18, issue 4, 2007, p. 697 ('presumably, that breach of the duty of prevention does not itself constitute a violation of *jus cogens').*

42 See also L. van den Herik, E. Irving, 'Due Diligence and the Obligation to Prevent Genocide and Crimes Against Humanity', in H. Krieger, A. Peters and L. Kreuzer (eds), *Due Diligence in the International Legal Order,* Oxford 2020, p. 205; C.J. Tams, L. Berster and B. Schiffbauer, *The Genocide Convention: Article-by-Article Commentary (second edition),* Beck-Hart-Nomos 2024, p. 58.

43 This provision can be understood against the background of the broad, extraterritorial obligation to prevent genocide.

Positive obligations that states have in human rights treaties are usually territorially limited See also H. Krieger, A. Peters and L. Kreuzer (eds), *Due Diligence in the International Legal Order,* Oxford 2020, p. 368.

44 S. Forlati, 'The Legal Obligation to Prevent Genocide: Bosnia v. Serbia and Beyond', *Polish Yearbook of International Law* Vol. 31 2011, p. 201; H. Krieger, A. Peters and L. Kreuzer (eds), *Due Diligence in the International Legal Order,* Oxford 2020, p. 12; CJ Tams, L. Berster and B. Schiffbauer, *The Genocide Convention: Article-by-Article Commentary (second edition),* Beck-Hart-Nomos 2024, p. 55, 56: it is to make 'best efforts' regardless of the outcome.

45 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 430.

46 Ibid., par. 431.

47 Ibid., par. 430.

48 Ibid., par. 430.

49 Tams calls this a 'legal prerogative'. CJ Tams, L. Berster and B. Schiffbauer, *The Genocide Convention: Article-by-Article Commentary (second edition),* Beck-Hart-Nomos 2024, p. 57

50 See M. Longobardo, 'Due Diligence in International Humanitarian Law', in: H. Krieger, A. Peters and L. Kreuzer (eds), *Due Diligence in the International Legal Order,* Oxford 2020, p. 184 and P. de Sena, 'La “due diligence” et le entre le sujet et le risque qu'il faut prévenir: quelques observations', in *Le standard de due diligence et la responsabilité international,* SFDI 2018, p. 243–254.

51 E. Ruvebana, *Prevention of genocide among International law: An analysis of the obligations of States and the United Nations to prevent genocide at the primary, secondary and tertiary levels,* Thesis fully internal (DIV), University of Groningen, 2014, p. 172, which refers to the opportunity France had to prevent the genocide in Rwanda in 1994.
prevent.

52 ICJ 26 February 2007, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ Reports 2007,* p. 43, par. 430: 'the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might [achieve] the result – averting the commission of genocide – which the efforts of only one State were insufficient to produce.' See also L. van den Herik, E. Irving, 'Due Diligence and the Obligation to Prevent Genocide and Crimes Against Humanity', in H. Krieger, A. Peters and L. Kreuzer (eds), *Due Diligence in the International Legal Order,* Oxford 2020, p. 206; E. Ruvebana, *Prevention of genocide under International law: An analysis of the obligations of States and the United Nations to prevent genocide at the primary, secondary and tertiary levels,* Thesis fully internal (DIV), University of Groningen, 2014, p. 172; CJ Tams, L. Berster and B. Schiffbauer, *The Genocide Convention: Article-by-Article Commentary (second edition),* Beck-Hart-Nomos 2024, p. 58; Glanville (2021), p. 114.

53 After all, the third country has the right to as a state party to demand compliance with its obligations under the Genocide Convention. See also B. Schiffbauer, 'The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention', *Genocide Studies and Prevention: An International Journal,* Vol. 12-3, 2018, p. 86-87, citing research into the effectiveness of *naming and shaming.*

54 See, with critical comments on the effectiveness of *'naming and shaming',* M. Krain, 'J'accuse! Does naming and shaming perpetrators reduce the severity of genocides or politicians?', *International Studies Quarterly* Vol. 56-3, 2012, p. 574-589.

55 https://www.un.org/en/genocide-prevention/prevention-genocide-related-crimes/special-adviser

56 RJ Barber, 'Cooperating through the General Assembly to end Serious Breaches of Peremptory Norms', *International and Comparative Law Quarterly,* Vol. 71, 2022, p. 1-35.

57 https://www.peaceau.org/en/article/au-special-envoy-on-preventing-genocide-atrocities-assumes-duty

58 J. Verbeke, *Diplomacy in practice: a critical approach,* Routledge, 2023, p. 200.

59 See JC McKenna, *Diplomatic protest in foreign policy: analysis and case studies,* Loyola University Press, 1962.

60 See on this subject I. Roberts, 'Diplomatic communication', in I. Roberts (ed.), *Satow's diplomatic practice, 8th Edition,* Oxford University Press, 2023, p.117 (note

verbal), p.121 (démarches).

[61] J. Verbeke, *Diplomacy in practice: a critical approach,* Routledge, 2023, p. 200.

62 See also Article 54 of the Articles on state liability (ARSIWA), in: ILC, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)', *Yearbook of the International Law Commission,* 2001, vol. II, Part Two.

63 See E. Denza, 'The diplomatic mission, the corps, breach of relations, and protection of interests', in I. Roberts (ed.), *Satow's diplomatic practice, 8th Edition,* Oxford University Press, 2023, p. 157.

64 See, for example, the recent cancellation of Spain's purchase of Israeli anti-tank missiles: https://www.timesofisrael.com/spain-reneges-on-325m-purchase-of-anti-tank-missiles-from-israels-rafael/

65 See Article 49 of the Articles on state liability (ARSIWA), in: ILC, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)', *Yearbook of the International Law Commission,* 2001, vol. II, Part Two.

66 See also the pending procedures for the International Court of Justice: *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar: 7 States intervening); Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (South Africa v Israel); Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v Germany).*

67 See on crimes against humanity For example, B. Nanyunja and V. Todeschini, "The 'Obligation to Prevent' in a Future Crimes Against Humanity Convention," *Just Security* , September 27, 2024. On obligations to respect the Geneva Conventions (1949) on the laws of war, see in particular Common Article 1 (of the Geneva Convention relative to the Protection of Civilian Persons in Time of War). However, for an argument against third-state obligations under this article, see MN

Schmitt and S. Watts, 'Common Article 1 and the Duty to "Ensure Respect"', *International Law Studies* 96, 2020, p. 674.

[68] JA Trampert, *State responsibility for complicity in and other contributions to international crimes and serious human rights violations,* PhD Thesis, fully internal, University of Amsterdam, 2024.